

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LOR XIONG

Plaintiff,

v.

Case No. 07-C-0208

**MICHAEL J. ASTRUE,
Commissioner of the Social Security Administration
Defendant.**

ORDER

On August 24, 2007, I granted the parties' joint motion to remand this matter pursuant to 42 U.S.C. § 405(g), sentence four, and ordered the clerk to enter judgment in plaintiff's favor. Plaintiff now moves for an award of attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. The Commissioner does not oppose the motion.

The EAJA mandates an award of attorney's fees to a prevailing party with a net worth of less than \$2,000,000 in a civil action against the United States where the government's position was not substantially justified, no special circumstances make an award unjust, and the fee application is submitted to the court within thirty days of final judgment. 28 U.S.C. § 2412(d)(1). Because I remanded the Commissioner's decision under sentence four of 42 U.S.C. § 405(g), plaintiff is a prevailing party in this case. See Shalala v. Schaefer, 509 U.S. 292, 302 (1993). His motion is timely, his net worth does not exceed \$2,000,000, and the Commissioner does not contend that the government's position was substantially justified or that special circumstances would make an award unjust. Therefore, plaintiff is entitled to an award. Finally, I find the amount of plaintiff's request reasonable, both in terms of the rate

requested and the number of hours spent.

THEREFORE, IT IS ORDERED that plaintiff's motion for an award of attorney's fees (R. 18) is **GRANTED**, and plaintiff's counsel, David Traver, is awarded fees in the amount of \$4386.

Dated at Milwaukee, Wisconsin, this 16th day of October, 2007.

/s Lynn Adelman

LYNN ADELMAN
District Judge